IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS McALLEN DIVISION

GUERRA & MOORE, LTD., L.L.P. Plaintiff	99	
v.	§ 8	CIVIL ACTION NO. 7:11-cv-299
MARCO A. CANTU, DEBTOR,	§	
LAW OFFICE OF MARK A. CANTU,	§	
P.L.L.C., AYSSA CANTU and	8	
SANDRA DIAZ,	8	
Defendants	3	

PLAINTIFF'S RESPONSE TO SANDRA DIAZ'S OPPOSED EMERGENCY MOTION TO STAY ISSUANCE OF WRIT OF ASSISTANCE [Doc. 218]

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Guerra & Moore, Ltd, LLP, Plaintiff, and file this their Response to Sandra Diaz' Opposed Emergency Motion to Stay Issuance of Writ of Assistance [Doc. 218], and in support of their response would respectfully show to the Court as follows:

- 1. In response to the allegations in Defendant Sandra Diaz motion, Plaintiff responds as follows:
 - a. Plaintiff admits the allegations in ¶1 of Defendant's Motion.
 - b. Plaintiff admits the allegations in ¶2 of Defendant's Motion.
 - c. Doc. 212 speaks for itself; otherwise denied.
 - d. Defendant has correctly cited Fed. R. Civ. P. 70(d).
 - e. Plaintiff admits the allegations in ¶5 of Defendant's Motion.
 - f. Plaintiff denies the allegations in ¶6 of Defendant's Motion.
 - g. Paragraph 7 is a prayer for relief, not requiring admission or denial.
 - h. Plaintiff denies the allegations in ¶8 of Defendant's motion.
- 2. On the basis of no authority, Defendant is requesting that the Court "stay the issuance of any writ of possession." [Doc. 218] at ¶7. Defendant's motion appears to be predicated upon *ex parte* or clerk-based relief being granted. Plaintiff has brought the matter of a Writ of Assistance before the Court on a motion [Doc. 221], therefore

preventing any ex parte or clerk-based relief. Because the matter has been brought

directly to the Court, it would appear that Defendant's motion is largely moot.

3. Defendant has provided no authority for a stay, nor any evidence to support a

stay.

4. Plaintiff opposes issuance of a stay, as it would conflict with the relief sought in

Doc. 221. Moreover, no writ will be issued without the Court considering and approving

same. Defendant has provided no reason why the Court should "stay" consideration

whether a writ should issue.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the

Court DENY Defendants' motion, and all such other and further relief, at law or in

equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

GUERRA LAW GROUP, PLLC

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By: ____/s/ David J. Lumber_____

David J. Lumber

Texas Bar No. 24002504

S.D. Tex. No. 22085

ATTORNEY FOR PLAINTIFF GUERRA &

MOORE, LTD, LLP

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, a true copy of this instrument has been served via ecf service and or regular U.S. mail on the 1st day of September, 2017, as follows:

/s/David J. Lumber

Kelly K. McKinnis 612 Nolana, Suite 240 McAllen, TX 78504

Diann Bartek 1400 N. McColl Rd. McAllen, Texas 78501

Mark Cantu 801 W. Nolana, Suite 320 McAllen, Texas 78504